

EXHIBIT C-1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 19-11845-sh1

4 - - - - - x

5 In the Matter of:

6

7 BSG RESOURCES LIMITED (in administration) and WILLIAM

8 CALLEWAERT and MALCOM COHEN, as JOINT ADMINISTRATORS,

9

10 Debtors.

11 - - - - - x

12

13 United States Bankruptcy Court

14 One Bowling Green

15 New York, NY 10004

16

17 October 3, 2019

18 11:21 AM

19

20

21 B E F O R E :

22 HON SEAN LANE

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Status Conference

2

3 HEARING re Doc. #45 Letter Filed On Behalf Of William
4 Callewaert And Malcom Cohen, As Joint Administrators

5

6 HEARING re Doc. #46 Letter In Response Filed On Behalf Of
7 Vale S.A.

8

9 HEARING Re Doc. #47 Letter Seeking Court's Approval Of A
10 Protocol To Guide Disclosure Of Personal Information Under
11 The General Data Protection Regulation In Discovery Filed On
12 Behalf Of Vale S.A.

13

14 HEARING re Doc. #48 Letter In Response To The Letter Seeking
15 Court's Approval Of A Protocol To Guide Disclosure Of
16 Personal Information Under The General Data Protection
17 Regulation In Discovery, Filed On Behalf Of William
18 Callewaert and Malcom Cohen, as Joint Administrators

19

20 HEARING re Doc. #50 Letter In Response To Joint
21 Administrators Letter Filed On Behalf Of Vale S.A.

22

23 HEARING re Doc. #50 Letter In Response To Joint
24 Administrators Letter Filed On Behalf Of Vale S.A.

25

1 HEARING re Doc. #53 Letter In Response Filed On Behalf Of
2 William Callewaert And Malcom Cohen, As Joint Administrators

3
4 HEARING re Doc. #54 Letter In Response Filed On Behalf Of
5 William Callewaert and Malcom Cohen, as Joint Administrators
6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

2

3 CLEARY GOTTlieb STEEN & HAMILTON LLP

4 Attorneys for Vale

5 One Liberty Plaza

6 New York, NY 10006

7

8 BY: JEFFREY A. ROSENTHAL

9 LISA M. SCHWEITZER

10 EMILY J. BALTER

11

12 DUANE MORRIS LLP

13 Attorneys for the Joint Administrators

14 1540 Broadway

15 New York, NY 10036

16

17 BY: FREDERICK D. HYMAN

18 JARRET HITCHINGS

19

20 ALSO PRESENT TELEPHONICALLY:

21

22 WILLIAM CALLEWAERT

23 MALCOLM COHEN

24 PATRICK J. HOLOHAN

25

1 P R O C E E D I N G S

2 P R O C E E D I N G S

3 THE COURT: We're here for BSG Resources Limited,
4 a Chapter 15 case. Let me get appearances from counsel.

5 MR. HYMAN: Good morning, Your Honor. Fred Hyman
6 from Duane Morris on behalf of the joint administrators. I
7 have with me my colleague, Jarret Hitchings. I also have in
8 the courtroom, Your Honor, Stephen Peters, who joined us
9 last time, who is a forensic accounting partner at the firm
10 of BDO.

11 MR. ROSENTHAL: Good morning, Your Honor. Jeffrey
12 Rosenthal of Cleary Gottlieb on behalf of Vale. I'm with my
13 partner, Lisa Schweitzer and my associates, Emily Balter and
14 Sam Levander.

15 THE COURT: All right. Good morning to you all.
16 So let me just set the stage. So we're here in connection
17 with a variety of filings. A letter -- this is not
18 exclusive. On the one hand, we had the motion; that is, the
19 motion was filed regarding discovery, seeking a protective
20 order, responses to that, a hearing that took place July
21 30th. There has been numerous proceedings dealing with
22 discovery since. We got together August 29th for a
23 conference, and there's a transcript of that.

24 There are letters on August 27th, September 9th,
25 September 12th, September 13th, September 16th, September

1 17th, September 18th, September 25th that fill out the
2 ongoing discussions back and forth. And just for brevity in
3 the record, I'm not going to identify each -- each -- who
4 sent each letter and the extent of the letters. I think
5 they're all in the docket. So at a certain point, I think
6 they are the docket. So I think one's 45, one's 46, one's
7 47, one's 48, 50, 54, 58.

8 And then we had an amended notice of hearing that
9 is on Docket 60 that set today as a hearing on document
10 production and GDPR issues. We really are on everything
11 that's been filed back and forth, and that actual item ended
12 notice of hearing actually identifies the various things
13 that had been filed, I think gets all of them, but so many
14 filings, it's hard tell who was.

15 So I have read everything, and we have a variety
16 of matters to talk about. So the one thing I will not do
17 here -- I will not do today is I will not leave here without
18 an order, because the lack of an order has just led to
19 further mischief and lack of progress, and I'm not trusting
20 anybody. I will draft the order myself if necessary and
21 without input from anybody, but I'm tired of this.

22 It just -- I've never seen a case with these kind
23 of discovery problems in my nine years plus on the bench.
24 And in a Chapter 15 case, where COMI is clearly an issue and
25 what people are doing and where they're doing it is so

1 clearly an issue, I have just -- it boggles the mind.

2 So with that said, since we have a requesting
3 party and essentially an ongoing opposing party to
4 discovery, I think it makes sense from hear from Vale, who
5 is a creditor of BSGR, as they call it. I think I've been
6 calling it BSG, but they're really the same thing and just
7 occasionally, the different terms pop up in the papers.

8 So the first question is whether to do this
9 seriatim issue-by-issue. I suspect that that's the way to
10 go, because if we go through everything, who will remember
11 what we talked about at the beginning by the time we get to
12 the end.

13 MR. ROSENTHAL: I think that makes sense, Your
14 Honor. I had thought that just setting the stage for
15 ourselves, I would just lay out the issues that we expected
16 to cover today. We thought we would just start with an
17 update on the production for Your Honor.

18 THE COURT: All right, that will be helpful. I
19 know that's one of the issues.

20 MR. ROSENTHAL: And then we have three issues in
21 dispute regarding sources of production: one has been Beny
22 Steinmetz; two is from officers and directors and Onyx,
23 their back office; and three is the current directors,
24 including Mr. Cramer. And then last, we have the GDPR
25 issues, which my colleague, Ms. Balter is going to address.

1 THE COURT: All right. I think that's pretty much
2 how I had outlined it in my own preparation for today.

3 MR. ROSENTHAL: So with regard to the production
4 update, Your Honor. One of the letters that you had cited
5 was the August 27th letter by the joint administrators'
6 counsel to the Court. It set the stage for the Court
7 conference several days later, in which the joint
8 administrators laid out kind of a tri-part type of schedule,
9 right.

10 So they had 320 documents that they were going to
11 be producing the following week. They had 37,730 documents
12 that would be reviewed, produced on a rolling basis with a
13 target completion of September 27th, and the remainder
14 would be reviewed with -- produced on a rolling basis with a
15 target completion of October 26th.

16 We did get the 320 documents a couple of weeks
17 later than we were told we would get it, but we did get it.
18 There were actually 211 unique documents; the rest were
19 duplicates.

20 With regard to the 37,730 that would be produced
21 on a rolling basis with a completion of September 27th,
22 today is October 3rd, we haven't seen one document.
23 Needless to say, therefore, the documents that the rolling
24 completion would be done by October 26th, we have not seen a
25 document either. We have agreed -- and this kind of helped

1 them release the first batch of 320 -- we said that until
2 the Court addresses the GDPR protocol, we'll accept
3 provisionally their protocol so that that's not an excuse to
4 delay any productions. They then released the 320. We've
5 heard no explanation at all, and in the letters to the
6 Court, there's been no explanation for the lack of those.

7 And unless the Court wants to address that before
8 the three issues in dispute.

9 THE COURT: Let's deal with the three issues in
10 dispute, and then we'll loop back to the schedule.

11 MR. ROSENTHAL: So with regard to the three
12 issues, Your Honor, the first one is Beny Steinmetz, you
13 know, the number one, the big boss, the beneficial owner of
14 BSGR. And the Court made a lot of statements that was
15 really spot on to the law back at the last conference, in
16 which Your Honor said, for example, at Page 44, if somebody
17 is conducting business and enterprise through personal
18 email, you can just read the headlines in the "New York
19 Times" to figure out it's not protected as personal email.
20 And I will -- and nobody's going to cite anything to me for
21 that.

22 If he's conducted business and he's conducted
23 business and wrote emails, and it sounds like there are
24 emails, then there are emails and is conducting business,
25 then he needs to turn over what needs to be turned over.

1 And if he's a principal, he's part of the Debtor.

2 So the Court posed several questions. We provided
3 you with some law to back up what Your Honor was saying to
4 begin with. But Your Honor was really focused on the
5 factual issues, because the law is so well settled here in
6 the Southern District. And the factual issues are: number
7 one, is he the beneficial owner, because if he is, that's
8 the end of the story; and number two, if he's not the
9 beneficial owner, was he out there negotiating the
10 settlement with Guinea? Because then if he did that, that's
11 an issue relating to COMI and acting as an agent for the
12 company. It's also subject to discovery here.

13 So we addressed those factual issues. And,
14 frankly, Your Honor, there's no dispute. We set forth the
15 evidence that we have, that Beny Steinmetz is the beneficial
16 owner, through Nysco the parent, and then that's owned by
17 the Balda Foundation, which is his family's trust to say
18 that he's the beneficial owner. There's been no engagement
19 or dispute on that issue in the papers.

20 And with regard to negotiation, we got back the
21 same response that Your Honor's been hearing. Well,
22 actually, the story has changed. We told Your Honor, since
23 June, that Mr. Steinmetz was the principal negotiator the
24 settlement with Guinea; that was denied repeatedly. In the
25 latest letter, the joint administrators have acknowledged

1 now that Mr. Steinmetz did negotiate it, but stand on the
2 idea that they still have final approval authority.

3 THE COURT: Well, I was dismayed to see the issue
4 sort of resurface at the end of the letters back and forth.
5 The letters initially seemed to move on to some details
6 about things that we hadn't completely nailed down. You
7 could argue that they had been discussed in sort of general
8 principals, but the devil's always in -- often in the
9 details.

10 But I was dismayed to see his questions about
11 what's appropriate for him or not still being raised, given
12 the facts that I have. So perhaps, I mean, if there's
13 anything else that you briefly wanted to add, but I'd like
14 to hear from the foreign representative on that.

15 MR. ROSENTHAL: Well, I mean, I would just say
16 that the law is quite clear on this, Your Honor. And I
17 think all the Court needs to do is read the Royal Park
18 decision, in which there's five different reasons given by
19 the Court there that all apply here as to why discovery of
20 Mr. Steinmetz is appropriate.

21 And critically, what the joint administrators have
22 done is they have looked at quote, literal control -- do
23 they literally have the ability to force him to do this --
24 as opposed to the test that is in the Southern District and
25 the Second Circuit, which is practical ability. And the

1 Court goes through what practical ability is, and it's clear
2 they have it here. Here is -- there's a financial interest;
3 that alone is practical ability. He was their agent; that
4 alone is practical ability.

5 The other thing, Your Honor, that isn't set forth
6 in the letters, but I think is very relevant to this, is the
7 Royal Park court talks about the fact that the subjects of
8 the requested discovery had participated in prior discovery
9 when it suited the party that was resisting it, and we have
10 that here.

11 Mr. Steinmetz and virtually everybody we're
12 seeking discovery from here produced documents in connection
13 with the arbitration, submitted witness testimony in the
14 LCIA arbitration in favor of BSGR, submitted witness
15 testimony, and came to Paris and testified on behalf of BSGR
16 in the ICSID arbitration.

17 And, you know, we even have and we can hand up to
18 the Court two items: one is an email from Mr. Steinmetz
19 confirming that he checked his files in connection with the
20 LCIA arbitration and the documents requests; and we have a
21 list of all of the custodians that were checked in the LCIA
22 that BSGR's counsel, now the joint administrators' counsel,
23 prepared for us and gave us. Dag Cramer, we checked his
24 phone, we checked his tablet, we checked his home drive.
25 Beny Steinmetz, we checked his BlackBerry, we checked his

1 backup data.

2 So, you know, the notion that they now don't have
3 a practical ability to obtain this is preposterous, and they
4 certainly have not met their burden of proof of avoid a
5 court order here. And that's all I have to say on Mr.
6 Steinmetz for now. I'm happy to hand up these two documents
7 that I just referred to.

8 THE COURT: Good. Just make sure they're shared
9 with the other side. Thank you. All right. Let me hear
10 from the foreign administrators.

11 MR. HYMAN: Good afternoon, Your Honor. If you
12 wouldn't mind, we'd like an opportunity to address issues
13 relating to the current status of production and what we
14 anticipate going forward. We're hopeful that Mr. Peters
15 could present to Your Honor, since he is on the ground and
16 is overseeing --

17 THE COURT: I want to deal with Mr. Steinmetz
18 first.

19 MR. HYMAN: Sure, Your Honor. Your Honor, the
20 context of discovery shouldn't relate to COMI. We
21 understand the order from this Court requiring the joint
22 administrators and BSGR to seek documents back from the date
23 of 2014. Certainly, COMI itself is judged as either the
24 date of the joint administration or the date that the
25 Chapter 15 was filed. The documents that we were just

1 handed all predate the issues relating to either one of
2 those dates.

3 THE COURT: Well, they're submitting them to show
4 his involvement in BSG. So -- and I've yet to hear any
5 dispute of the core facts about him being the guy, for lack
6 of a more legal term. And the foreign representatives were
7 appointed and that's nice, but they don't control him,
8 pretty clearly if the allegations in the factual proffers
9 that have been given to me, are evidence in terms of what
10 he's doing or not doing on behalf of BSG, which is, after
11 all, named for him.

12 And so, without any dispute about any of those
13 facts, why are we still talking about this having talked
14 about this at numerous prior hearings?

15 MR. HYMAN: There is no dispute as to what is in
16 press reports. The joint administrators themselves do not
17 know if Beny Steinmetz and his family ultimately own and
18 control Balda, but we have no reason -- they have no reason
19 to believe that he doesn't.

20 THE COURT: That actually doesn't even necessarily
21 matter if he's out doing things for BSG holding himself out
22 and negotiating deals, which is all relevant to COMI in
23 terms of him being a central figure in the ongoing business.
24 So he could actually have sold every bit of his beneficial
25 interest. If he is -- if he is holding himself out and

1 negotiating deals on behalf of BSG, that's just another way
2 to get to the same place. So what is it that you are not
3 willing to do in connection with producing things relating
4 to Mr. Steinmetz?

5 MR. HYMAN: The joint administrators do not have
6 control over Mr. Steinmetz in order to require him to
7 produce documents to this Court; they simply don't.

8 THE COURT: So when this came up last -- the
9 problem with this, with the discussions we've been having
10 about this is, it's -- we address one thing and then
11 something else -- it's a variation on a theme -- comes up.
12 So am I understanding that you now concede, after having
13 talked about it numerous times, that Mr. Steinmetz is fair
14 game for purposes of subject matter of what he was doing or
15 not doing for purposes of the COMI in this Chapter 15?

16 MR. HYMAN: I think that what we've provided, Your
17 Honor, in connection with our most recent letter was a
18 Declaration of William Callewaert, who happens to be on the
19 phone today listening in. He's one of the joint
20 administrators located in Guernsey.

21 THE COURT: Can I get an answer to my question?

22 MR. HYMAN: Yes. What we are focused on, Your
23 Honor, is what has happened following the administration
24 when the joint administrators were appointed, at which time,
25 nobody other than the joint administrators had any authority

1 to bind BSGR, nor to act as agent for BSGR.

2 THE COURT: Okay. I have heard this argument
3 numerous times, and I think I have overruled this argument
4 numerous times, saying that the foreign administrators can
5 say what they want to say in terms of administration in
6 Guernsey and in terms of getting Court approval in Guernsey
7 to act. That clearly may or may not have any effect on what
8 Mr. Steinmetz apparently is doing in terms of negotiating
9 settlement agreements.

10 We talked about this in detail last time. And you
11 said, but those settlement agreements can't get ultimately
12 approved without Court approval in Guernsey and that's the
13 foreign administrators job. That's fine. That doesn't
14 change the fact that he's involved up to his eyeballs in the
15 business of BSG.

16 So unless you have something else, I'm not looking
17 for a concession anymore. I will just tell you, I am making
18 a ruling and it will be memorialized in an order that Mr.
19 Steinmetz, anything he has done is fair game for purposes of
20 determining COMI. And COMI tells the relevant times
21 periods. There's plenty of cases on that. We'll get to
22 that.

23 But we still keep talking about the foreign
24 representatives versus Mr. Steinmetz, and he can sort of do
25 his thing, but they have the ultimate authority. It doesn't

1 matter for purposes of COMI. It is not a basis to restrict
2 discovery.

3 MR. HYMAN: But it does, Your Honor, if it's COMI
4 of BSGR at the time that the joint administration was -- it
5 was connected.

6 THE COURT: The time period for COMI is a
7 different issue, right, and I have zero briefing on that,
8 despite the voluminous things that I have here. And this,
9 again, goes to the whack-a-mole nature of what we've had
10 with discovery. We get through one issue and then views
11 shift, and then we go to another issue and then views shift,
12 and then we end up talking about other issues.

13 So now we're talking about COMI and timeframe.
14 I've dealt with that plenty. I'm not alone in this
15 courthouse. You can look, there's plenty of opinions to
16 talk about the relevant time for considering COMI. What I'm
17 saying is that I am overruling your objection to Mr.
18 Steinmetz saying he's not -- discovery relating to him and
19 his actions is not relevant. COMI and the cases in this
20 jurisdiction tell us what time period is relevant. It is
21 what it is what it is.

22 What I'm saying is that I am overruling your
23 objection as to Mr. Steinmetz and his involvement and,
24 therefore, the appropriateness of discovery as to what he
25 has been doing on behalf of BSG.

1 MR. HYMAN: And to be clear, because maybe I
2 wasn't. I don't think, and I know that we aren't contesting
3 -- or the joint administrators are not contesting that
4 whether Beny Steinmetz was out purporting to represent BSGR
5 and other entities is not relevant for Your Honor's
6 consideration in terms of COMI.

7 THE COURT: Well, it doesn't matter at this point.
8 I asked you whether you conceded that. I couldn't get an
9 answer. I've now made a ruling. So the ruling that will be
10 memor- -- and we're going to keep track of these -- that
11 will be memorialized in the order is that discovery relating
12 to Mr. Steinmetz's activities on behalf of the Debtors are
13 relevant, period full stop, for COMI.

14 All right. So what else do we need to talk about
15 in connection with Mr. Steinmetz?

16 MR. HYMAN: Can I just clarify that for one
17 moment?

18 THE COURT: No, because it's a ruling, and it's
19 not your ruling, so you don't need to clarify it. What else
20 do you have?

21 MR. HYMAN: Is the -- can I ask if the ruling
22 requires the joint administrators to produce documents that
23 Beny Steinmetz personally has?

24 THE COURT: It -- okay, so now we're moving onto
25 the issue of control --

1 MR. HYMAN: Yes.

2 THE COURT: -- which is a separate issue and
3 separately briefed. So the rules about control -- and
4 that's what's frustrating about this ongoing discovery
5 dispute that we've been talking about for months -- is I'm
6 only applying well-established rules, right? So the rules
7 about COMI and timing; well established. The rules about
8 what's fair game when somebody's acting on behalf of a
9 corporation and/or the beneficial owner; well established.

10 The rules about control are equally well
11 established. And I have one of your articles sitting on my
12 library that talk about them, and they're 25 years old and
13 the law hasn't really changed all that much. So if they
14 have an ability to obtain those documents through the
15 exercise of their positions -- and so, you know, I'm going
16 to flummox the actual standard, but it's all the papers.

17 So if they have the ability as a legal matter and
18 possession, custody or control. And what's normally ignored
19 by folks is control. You may not have it, but you have the
20 ability to get it and ask for it; that is control. And so,
21 I can deal with that in more detail if people need, but,
22 again, I'm not reinventing the wheel. I'm not issuing any
23 sort of decisions on an issue that is unclear out there in
24 the law. It's -- this horse has been beaten to death in so
25 many opinions, I can scarcely count them.

1 So I'm not going to rely on what I've been hearing
2 thus far, which is a more myopic view of what the foreign
3 representatives have. So if they have it sitting in their
4 office, that is not pro-extensive with possession, custody
5 or control for purposes of producing documents in this
6 Chapter 15.

7 The other problem I have with all of this is that
8 you need to reach your burden of proof for purposes of
9 getting recognition. So the other way this goes is if you
10 don't produce things, and there's plenty of stuff that they
11 can raise and say we have every reason to believe X, Y and
12 Z, they haven't met their burden. You say, well, we don't
13 have this stuff, we don't really know; you're not going to
14 satisfy the burden for recognition.

15 I've never seen a case that was filed where there
16 was such a desire to not move forward with recognition. So
17 that's the other problem you're ultimately going to face, is
18 your ability to satisfy your burden for proving recognition,
19 which is, again, well established and applicable. There's
20 tons of decisions, so I won't beat that horse to death.

21 So is there anything specifically on possession,
22 custody or control that we need to address here today?

23 MR. HYMAN: All right. If your ruling is as it
24 stood, Your Honor, I don't believe that there is, but I
25 think that we will take Your Honor's ruling to heart. There

1 has never, notwithstanding the appearances and the delay in
2 discovery, there has never been intend on anybody's part to
3 delay discovery. We absolutely know what the burden is. I
4 think you will hear --

5 THE COURT: Well, that -- I never know what's
6 going on behind the scenes. I only see what positions
7 people take in course and the progress of the case. I --
8 that's a hazard of the job. But all I can say is, this case
9 has not moved forward in the way that other Chapter 15s do;
10 it's in the statute, the need for speed in Chapter 15. And
11 most parties come, consistent with that, and say we have
12 issues about COMI; and, therefore, what do you need, we're
13 going to get it done, we're going to come in.

14 And so, there's just been a series of positions
15 taken by the administrators that basically really don't seem
16 to have a whole lot of merit to slow discovery down and it
17 really just involved me applying in detail very well-
18 established principles of law. And then we leave, I think
19 we have an understanding, and then people come back and say,
20 well, nothing was produced or well, Mr. Steinmetz, we
21 thought we solved it, but we didn't solve it.

22 And so, that's why this order is going to be blow-
23 by-blow-by-blow, because I think it's not -- it's just not
24 the way the system is supposed to work. So the order should
25 contain a ruling that -- that the Petitioners are required

1 to produce documents under the possession, custody and
2 control. Please find the most pedestrian well-traveled
3 version of this standard that I'm applying here, but that
4 you can quote it for an applicable; if not, I'll find one.
5 And, again, I'm just applying the applicable law.

6 MR. HYMAN: We appreciate that, Your Honor.

7 THE COURT: All right. Now, before we go on to
8 the next issue, I know you did want to talk about the status
9 of documents and scheduling and where things are, and I know
10 he had addressed it, so I didn't want to leave something on
11 Mr. Steinmetz.

12 MR. ROSENTHAL: Just on Mr. Steinmetz, Your Honor,
13 just because, again, I'm just kind of trying to head off the
14 next roadblock, which is, you know, for them to come back
15 and say, well, we actually don't have the practical ability.
16 And there is -- there's four factors that the Royal Park
17 court cited, and they're all applicable here. They all
18 exist here.

19 And the Royal Park court basically then said,
20 okay, I'm entering a finding that you have a practical
21 ability; go do it. Because I don't want them to come back
22 and say -- and the Royal Park court, in fact, said this
23 isn't a serial opportunity to kind of keep raising a new
24 roadblock each time.

25 And the four factors are: number one, financial

1 interest. I think the Court can find that he has a
2 financial interest based on the record; this is not
3 contested. Number two, did things acting as agent on behalf
4 of the company. We've put in the record; it hasn't been
5 contested. Number three, the fact that this person has
6 participated in discovery voluntarily on behalf of the
7 corporation in the past; we've put in that record.

8 And number four -- and actually, this is what
9 really disturbed the court in Royal Park -- is they never
10 even asked prior to coming to court and saying that we don't
11 have control. And we said, the least that you can do is,
12 before coming to court, is to show us evidence that you've
13 asked them to cooperate and they refused.

14 And I think we have all four of those factors
15 here; that just to avoid kind of a serial re-litigation of
16 this, I think it's appropriate for the Court to say, look,
17 this test is met under these circumstances.

18 MR. HYMAN: Your Honor, Royal Park was determined
19 in the context of five directors that were currently
20 directors. There were the economic interests; was the
21 economic interest or ability of the defendant to hire or
22 fire those directors.

23 This is, while there may be or not be an economic
24 interest on the part of Beny Steinmetz, it doesn't come
25 close to meeting the standards in Royal Park. And to say so

1 is disingenuous.

2 THE COURT: Well, let me ask you, does he have a
3 financial interest? I have seen a lot of information
4 provided to me at various hearings addressing that issue and
5 going through, in detail, him being the beneficial owner
6 through various different entities; and, therefore, having a
7 financial interest would -- which would explain his
8 extensive level of involvement. And, indeed, nobody on your
9 side has ever identified anybody else who's acting on behalf
10 of BSGR.

11 MR. HYMAN: The joint administrators are.

12 THE COURT: No, no. Before the joint
13 administrators leading up to the joint administration, you
14 haven't identified anybody at the company who seems to be
15 doing anything, other than the joint administrators. My
16 understanding of joint administrators is that they are not
17 necessarily the only people acting and so, you've never
18 named somebody else.

19 And so, but I backtrack. So I do have information
20 that has been provided on all the four factors that are just
21 identified, do you have any information factually about the
22 financial interest question; do you have anything to say
23 factually on that? Do you dispute he has a financial
24 interest?

25 MR. HYMAN: Ultimately, we read the press reports.

1 He may have an ultimate financial interest in his
2 subsidiary. However, when you look at Royal Park, the
3 financial interest went to control, and for the ability of
4 the party that was requesting those documents to exercise
5 some leverage over the party that had to comply. Here, that
6 isn't the case.

7 THE COURT: Are you saying, so he's involved in
8 negotiating the original deal with Guinea. He's involved in
9 negotiating the purported settlement, which I know you say
10 the foreign representatives need to approve -- I don't
11 disagree with that for purposes of the proceeding in
12 Guernsey -- but you say somehow, he doesn't have any degree
13 of control?

14 Again, you're -- so what I'm hearing is that
15 you're telling me right now that when you say he may have a
16 financial, that you don't dispute what's been provided to me
17 that he has a beneficial financial interest in the Debtor.

18 MR. HYMAN: We do not dispute that he may be the
19 ultimate beneficiary.

20 THE COURT: No, may be doesn't help me. May be is
21 -- may be is conditional. It means nothing. A lot of
22 things may be. The Mets may be better next year, but I know
23 better than to actually hook my wagon to that.

24 MR. HYMAN: So do I, Your Honor.

25 THE COURT: So I can't work with that. So I

1 haven't been presented with anything that disputes the
2 factual picture that's been presented to me about his
3 beneficial financial interests.

4 MR. HYMAN: We do not know that there is anybody
5 else that owns the equity interests or beneficial interests
6 of Balda.

7 THE COURT: And as to the second one, I'm not
8 hearing anything that disputes that he's acted as an agent
9 of BSG.

10 MR. HYMAN: He certainly is not authorized to act
11 as an agent, and he's not authorized to act as an agent
12 today.

13 THE COURT: Okay. But, again, we keep having
14 these discussions, and then you bring me back to a
15 particular characterization of an issue that's where you
16 want to fight this battle, which is after the Chapter 15 was
17 filed.

18 My understanding is that you don't dispute that he
19 negotiated the ultimate deal with Guinea, that is really
20 kind of the Debtors' business, or that he is involved in
21 trying to reach a settlement of the dispute with Guinea.
22 Again, a settlement you say he cannot -- that cannot be
23 finalized without the approval of the foreign
24 representatives, but that he was doing the negotiating.

25 MR. HYMAN: And may never be finalized.

1 THE COURT: No, no. I'm asking factual questions,
2 so I'm not asking for you to give me your gloss on what they
3 all mean. I'm asking very specific factual questions.

4 MR. HYMAN: Nobody denies that Mr. Steinmetz was
5 off negotiating a deal that he was not authorized to
6 negotiate. That settlement ultimately needs to be approved
7 -- I know that Your Honor is aware of that -- and reviewed
8 and revised. It may be ultimately agreed to in its current
9 form; it may never be agreed to. It may be agreed to in an
10 alternative form.

11 THE COURT: But he's holding himself out as BSG in
12 the context of those settlement discussions.

13 MR. HYMAN: But not with any authorization from
14 the joint administrators or BSG.

15 THE COURT: That's fine. I understand that
16 position. But it doesn't change the facts that he's holding
17 himself out, and clearly has apparent authority to anybody
18 who's talking to him, including the -- an independent
19 sovereign country.

20 So let me move on to number three. I realize you
21 were just presented with information dealing with his
22 involvement in discovery and complying with discovery in
23 other proceedings, including the tribunal -- and I don't
24 want to misstate. Could you remind me what the exact title
25 of the proceeding is?

1 MR. ROSENTHAL: Sure. So he provided documents or
2 searched for documents in connection with the LCIA
3 arbitration. He also provided live testimony in the ICSID
4 arbitration, and he provided multiple witness statements as
5 a witness in both the LCIA and the ICSID arbitration. I
6 think these are facts. I can't imagine they don't know
7 because it's been so part of the history of this company for
8 the last few years.

9 THE COURT: All right. Do you dispute any of
10 that?

11 MR. HYMAN: Only to point out that the dates are
12 prior to the joint administration, at which time nobody
13 other than the joint administrators have any ability to rule
14 or act on behalf of the company.

15 THE COURT: I understand that. All right. But
16 it's pretty clear he participated in the past in discovery
17 on behalf of the company in other proceedings. And so last,
18 but not least, the fourth factor: have the administrators
19 ever asked him to cooperate and provide documents that are
20 requested?

21 MR. HYMAN: To my knowledge, the joint
22 administrators are not in contact with Beny, not in contact
23 by email or by phone. There have been less than a handful
24 of meetings at which they have met Mr. Steinmetz, but that
25 is the full extent of the contact.

1 THE COURT: All right. So what I'm hearing is
2 that they have not asked him to cooperate and so -- in terms
3 of discovery sought. And so, I think all the -- I'll make a
4 finding that all four of the factors in Royal Park are
5 satisfied here, and we'll see where that gets us or doesn't
6 get us in the future.

7 All right. You wanted to talk about the status of
8 documents that are being produced and the schedule?

9 MR. HYMAN: Yup. If you wouldn't mind, Your
10 Honor, if Mr. Peters could address the Court in terms of
11 current production.

12 MR. PETERS: Your Honor, thank you again for
13 giving me an opportunity to address the Court. I just
14 thought it would be helpful really, just to understand where
15 we've got to in terms of the document production since the
16 hearing on the 29th of August.

17 As you'll recall, there's a lot of discussion
18 about the 321 documents at that hearing. And subsequent to
19 that hearing, those documents were available for production.
20 There is, as Cleary mentioned, you know, there was a lot of
21 toing and froing about the protocol, which meant that the
22 production of those documents was delayed.

23 However, we had a call with Cleary on the 12th of
24 September to try and resolve the issues over protocol. And
25 when it was clear that that wasn't going to go anywhere, and

1 it's part of the reason why we're here today, we actually
2 did agree to release the documents in conjunction with
3 authorization of the protocol, and those documents were
4 released the following day.

5 Now, subsequent to that, we've been working on
6 getting more documents to disclose. We've now got a second
7 tranche of documents, comprising 425, that are ready to go,
8 and they've been based on a targeted search on issues that
9 we know would respond directly to the 68 requests that have
10 been put to us. They deal with Asher Avidan, Capital
11 Markets, BSG Real Estate, and the (indiscernible)
12 investigations that we've undertaken.

13 There's also a third tranche of documents, and
14 that's a third of 516 documents that are going to be ready
15 to go in the next day or so, and they relate to the Standard
16 Charter Security. And there are a number of invoices that
17 clearly demonstrate that COMI is guaranteed and, again, are
18 responsive.

19 Now, I suppose you ask, what about the rest?
20 Well, we've uploaded 1.2 million documents to relativity;
21 that's significantly more than the 38,000 that were referred
22 to earlier.

23 Now, we're going through each of the 68 requests,
24 line by line individually, and coming up with key words that
25 will respond to the requests to identify responsive

1 documents. Now, that's an interesting process. When we
2 first do that, we get thousands and thousands of hits, tens
3 of thousands of hits for each request, which clearly, it's
4 just not realistic. And when we look behind that, there are
5 a significant portion that aren't responsive documents. So,
6 therefore, we need to look at ways to reduce that down to
7 documents that are purely responsive. So it's a step-by-
8 step process.

9 As things stand, we've identified documents that
10 are responsive for 35 of the 68 requests, and that's 28,000
11 documents. So that's -- you know, some of those documents
12 can be hundreds of pages long. We've now got a team of 15
13 specialist document reviewers going through the GDPR and
14 relevance and sorting and sifting on that basis. These are
15 then going to Duane Morris for them to check for legal
16 privilege, before coming back to us for final QC, at which
17 point, they can be prepped and made available.

18 Now, we expect to start that flow of documents in
19 the next week. And once it's started -- that's not the full
20 38,000 documents -- it will be a conveyor belt. So we've
21 been releasing documents for Cleary on a daily basis.

22 Now, in parallel to that, we're also looking at
23 the remaining 30 odd document requests. And by the time
24 that the 28,000 have been sifted, we will have uploaded
25 further documents that are responsive at the back end of

1 that, so the conveyer belt will continue.

2 And we expect to have all of those documents
3 disclosed, the relevant documents that have been reviewed
4 for GDPR that have been reviewed for relevant and have been
5 reviewed for legal privilege to be made available to Cleary
6 within 20 days of now.

7 Now, I'd just like to briefly touch on costs,
8 because, you know, it is relevant from our perspective. In
9 terms of the work that we're currently doing, we expect our
10 own costs, excluding our attorneys, to be somewhere in the
11 region of \$850,000 for this process. Now I know that Cleary
12 has asked that redactions are done in a particular way, and
13 we've done a few tests on that to see the effect of doing
14 that.

15 And if we go down the route that they want,
16 whereby they're asking us to redact and then put on an
17 individual redaction-by-redaction basis of description,
18 we're looking at costs in excess of \$2 million, and that's
19 obviously hugely significant. And, you know, the reality is
20 that it's not going to give them any additional information
21 that's relevant to COMI.

22 THE COURT: Well, I think we had had a discussion
23 about an attorneys-eyes-only process and order that would
24 give you an order that is important for purposes of any GDPR
25 issues and the privacy issues under the European regime, but

1 at the same time, allows a process that may be less
2 extensive and less costly.

3 And I think -- I think I had hoped, and I think I
4 said on the 29th, the parties should work on a joint
5 proposed order that would minimize regarding this process by
6 providing for attorneys-eyes-only, and hoped you would get
7 something to me in 10 days. And at the time we were
8 discussing it, I thought -- I had the sense that people
9 thought that would be useful. But, you know, that was more
10 than a month ago, and I never did get anything.

11 So my understanding is that a court order that
12 says what's necessary for purposes of the case takes things
13 out of the category 2 that we've been using as a framework
14 and would move into category 1, meaning that they've been
15 determined to be relevant for purposes of the case. And
16 essentially what it does is say that in order to deal with
17 the case efficiently, we've come up with a procedure to
18 safeguard privacy information, not make it generally
19 available and not widely disseminated.

20 And I know it's -- it probably is an American
21 concept to do attorneys-eyes/professional-eyes only, but
22 that it might be one, at least -- again, I didn't hear at
23 the time of the August 29th hearing anybody say that that
24 idea was dead in the water. But that was something I don't
25 think I've heard anything further about.

1 MR. ROSENTHAL: Your Honor, we were hopeful that
2 ultimately when we get an agreed-upon protocol, that that
3 would have the same effect. We thought we were very close.
4 We think we still are very close, with the exception of two
5 different issues. We don't think that there's an order of
6 this Court that just freely allows discovery of all GDPR
7 without some -- of all GDPR material without some
8 redactions.

9 THE COURT: No. I don't think anybody is
10 suggesting that an order resolves all GDPR issues. But I
11 think the idea was that, to the extent there was discussion
12 of different levels of redaction, that that might provide a
13 way to address that without having to redact, re-redact,
14 change redaction procedures, and provide more information so
15 as to resolve their objection without waiving your rights as
16 to how something was ultimately used or whether it was
17 ultimately made public.

18 And certainly, I don't think anybody -- and
19 certainly, I didn't and I don't think anybody took the
20 comments to mean that we're going to waive away GDPR issues
21 by virtue of that kind of an order. But rather than when
22 you began to get into very specific redaction procedures
23 that are very costly, that that's where that could be useful
24 and that the order would contain a number of very specific
25 findings about the case: involves the following parties;

1 COMI is an issue; COMI looks at the following things in
2 order to.

3 COMI, discovery in a case involving COMI would
4 include the following categories of information: the parties
5 have -- you know, there is some information that is being
6 clearly protected by GDPR that is being redacted or not
7 produced; and that this information, I think even in your
8 own papers, that said that it's less clear what's protected
9 and what's not protected.

10 And, frankly, if you're in those circumstances,
11 you really have no choice but to take the more cautious
12 route. But that, given that circumstance, the Court finds
13 that a showing has been made, for purposes of discovery,
14 that it is necessary to produce that information, but in
15 order to minimize any privacy issues, that this is the
16 procedure.

17 So that's what I had envisioned doing. Again, I'm
18 not trying to -- and I don't think anybody is, we've spent a
19 lot of time briefing GDPR issues, so I'm not trying to waive
20 away GDPR issues. I understand they're significant. I
21 appreciate counsel being here from across the pond to
22 discuss these issues, and so, I'm not -- I'm not trying to
23 waive them away.

24 But we often deal with, as you know, in Bankruptcy
25 Court, instances where there's litigation pending in many

1 forums. And so, I think what we try to be is helpful to the
2 extent that there are ways to -- that a Bankruptcy Court can
3 assist parties to not have to -- take some items off their
4 to-do list and some things that you can resolve by virtue of
5 findings in an order.

6 MR. ROSENTHAL: Your Honor, and we're going to get
7 to the protocol issues and this is one of the protocol
8 issues. What you'll find -- we think the issues with
9 respect to the protocol are relatively minor and easily
10 resolved. There are only two categories, that there is a
11 question as to whether it should be generally redacted or
12 generally unredacted; that is personal email addresses and
13 nationalities.

14 And it may be helpful in the event that Your Honor
15 rules one way or the other in respect to one of those two
16 things to include a ruling on that point. But as it relates
17 to all of the other categories, there's no dispute between
18 the parties.

19 THE COURT: All right. Because, again, I am
20 sensitive to costs. We're supposed to be in Bankruptcy
21 Court, right? People are filing for insolvency because they
22 have financial issues, whether it's an individual or a
23 company, series of companies. So certainly, I understand
24 that, and, in fact, the American discovery rules consider
25 that in terms of proportionality. And recently, that

1 concept sort of got a refresh in the rules, even though it
2 was always in the rules, just to remind folks that use of --
3 in a traditional domestic case, but I don't see why that
4 would be any different here. So certainly, that's part and
5 parcel of a protocol that's a court order.

6 But even if there are some issues that are
7 unresolved and parties essentially say, Judge, we just want
8 to reserve our rights, an order making certain findings
9 about how discovery should -- needs to proceed in a case
10 may allow parties to ultimately reserve their rights, not
11 spend unnecessary time on redaction procedures, which are
12 enormously expensive, and give you some comfort that you're
13 not going to be sued tomorrow on the basis of GDPR.

14 So that's why I was trying to sort of pitch it. I
15 know you're trying to, you know, trying to ultimately
16 resolve all issues of protocol and GDPR. But my sense is
17 what an order can do is finding this necessary for purposes
18 of the case than, you know, but I'm still not trying to
19 trample on anyone's rights, that attorneys-eyes-only is a
20 way to do that. So that's certainly the hope.

21 And I still think that would be true -- I know
22 there's a couple of categories that remain outstanding, but
23 there may be a way to produce those documents under the more
24 fulsome version, less redacted, and still preserve your
25 rights for purposes of GDPR in a finding that's saying for

1 purposes of discovery in this case, it's necessary to
2 proceed this way, consistent with Chapter 15s concerns about
3 expediting proceedings and costs, all sorts of things.

4 And, again, there are GDPR experts in the room. I
5 am not one of them. So you would tell me what that kind of
6 order, what it needs to look like and what's appropriate.
7 But certainly, I can think of some findings that we've
8 already gone through that would get us a lot of the way
9 there.

10 MR. PETERS: Thank you, Your Honor. That's really
11 helpful. I just -- and I know that Mr. Hyman says that
12 we're going to come on to a protocol. But the issues around
13 the protocol, you know, they're not about the
14 categorization. The difficulty we have isn't about the
15 categorization, per se; it's more about what Vale and Cleary
16 are asking us to do in terms of the redaction. And for
17 every single redaction, and we are talking hundreds of
18 thousands of redactions, they are asking us to put an
19 individual text box against each one to say what that
20 redaction is.

21 THE COURT: All right. No, I understand and we're
22 going to get there shortly. My thought is there are some
23 things, like personal emails is one of the categories, that
24 if I find for purposes of the case that they should be
25 produced attorneys-eyes-only, then they are -- and not

1 provided generally to the clients, to the public without
2 further order of the court -- that that's a level of
3 protection and a level of finding that still allows you to
4 preserve the issue, ultimately, while also not having you
5 even redact them in the first instance. And so, if you
6 don't redact them, even under their view of the world, no
7 redaction means no text box.

8 So even before I made a ruling on that, it would
9 sort of take that issue off the table. And also, frankly,
10 even if you don't put it in an individual text box, you'd
11 have to address it in sort of a general explanation of
12 things, and it would take that part of the process off --
13 off the list of things to do.

14 MR. PETERS: We have taken that into account in
15 our assessments of the additional time involved and then
16 have a search on that basis. But we know, obviously, you
17 know, you're fully aware of the issues and we'll deal with
18 it.

19 That's all I have to say on where we are in terms
20 of discovery. I would have liked the change -- but
21 obviously, you've made no (indiscernible) -- rebut the
22 misrepresentations based on inaccurate press reports around
23 Mr. Steinmetz's role. But, unfortunately, you've made --

24 THE COURT: Well, again, I read everything that
25 was provided to me, and I take that very seriously. So,

1 again, in discovery, it's not a trial, so I'm not making a
2 finding, but I'm making -- of any particular level of
3 involvement or particular acts. What I'm finding is that
4 there's been a basis given to me that says that Mr.
5 Steinmetz is fair game for discovery.

6 That's the way the American system works, which,
7 frankly, is different than the way a lot of other systems
8 work. And for some systems, discovery is a lot more
9 curtailed, and I recognize that. But for the American
10 system, essentially, you have a good-faith basis to say we
11 have a -- we want to know about this, this may be very
12 relevant.

13 And I found that that's satisfied. So that's --
14 and the only specific findings I think I'm making to Mr.
15 Steinmetz are the ones dealing with that Royal Park case,
16 which are very specific and really aren't necessarily --
17 they're not COMI related; they're sort of a control issue in
18 terms of what's appropriate for discovery.

19 MR. PETERS: Sure, Your Honor. I'd just like to
20 make a point regarding the repeated statements about the
21 role that Mr. Steinmetz in negotiating a deal with Guinea.
22 That is just clearly -- that is untrue. He may -- he may
23 have been involved in assisting discussions, but we got
24 notification from Dag Cramer --

25 THE COURT: You're talking about the settlement.

1 MR. PETERS: Yeah. So we got notification from
2 Dag Cramer --

3 THE COURT: Okay. No, I think what I meant was in
4 the underlying transaction to begin with, right? So there
5 was originally in a relationship, then Guinea terminated the
6 relationship, and then I know there's a settlement. And
7 what my comment was about his role in the initial
8 transaction.

9 And just to be clear, and I know he's been --
10 again, to use an often-referenced legal principle from
11 Broadway -- in the room where it happens as to settlement;
12 he's been involved. I'm not saying who had the pen and who
13 had ultimate authority, so I'm not casting any aspersions on
14 anything while the foreign representatives have been in
15 place. But I don't even, again, need to go there.

16 If he's -- when I look at COMI, I need to look at
17 where has business been going on, who's been doing what,
18 sort of going back in time. And so, that's -- I think
19 enough of a showing has been made on that. So I'm not
20 trying to be -- to parse that too finely because, frankly, I
21 don't have enough record to do that. I have enough record
22 to say he's involved enough that he's a fair game for
23 discovery.

24 MR. PETERS: Okay. Can I just ask, Your Honor,
25 please? If the Cleary's do bring this back onto the table,

1 we would like the opportunity to respond vigorously against
2 the allegations regarding settlements.

3 THE COURT: Well, I think what's been put on for
4 right now is a basis for discovery. I've made a ruling. So
5 I certainly hope, for purposes of discovery, we don't have
6 it come back on. If it ultimately becomes an issue at
7 trial, everybody preserves their rights to present as full
8 and complete and fulsome a record as you want on those
9 issues, so I'm not making any findings on the merits of any
10 of that. COMI is not in front of me today, and we'll get
11 there eventually.

12 MR. PETERS: Okay. Well, thank you for giving me
13 the opportunity to address the Court. Thank you.

14 THE COURT: Thank you.

15 MR. ROSENTHAL: Your Honor, addressing the
16 document issue. I have to say I'm extremely distressed here
17 because, you know, while Mr. Peters is not an Officer of the
18 Court, the Court has given an opportunity to address his
19 counsel rather than have him address the Court through
20 witness testimony.

21 And what we've heard today is, unfortunately,
22 quite different from what Mr. Peters stood up and told you
23 last hearing. And it's really distressing, in light of some
24 of the representations that were made leading up to these
25 hearings.

1 THE COURT: Well, here, I want to go through the
2 other merits issues and then loop back to production
3 schedule and where we are and all that stuff, right, because
4 I think the legal issues inform the production schedule. So
5 everybody reserves their rights. And, frankly, as you know,
6 judges generally are less concerned with the history of
7 discovery than they are with how do we get to the end.

8 MR. ROSENTHAL: Absolutely, Your Honor. I agree
9 with that complete. Ms. Balter is going to address the GDPR
10 issues that were most of his argument. I would address,
11 when we're done with the discovery categories, the
12 production information that we learned in some of the --
13 well, not just inconsistencies.

14 THE COURT: And I think we also have the former
15 and current directors in Onyx and that's going to involve
16 it. So let me ask, there are some nice folks who are in the
17 courtroom for an 11:30 matter. I think we are going to be
18 here for a while in this case. So my question is whether
19 now is an appropriate time to take a break or how do you
20 want to handle that, because I think we -- I mean, I'd be
21 stunned if we didn't have at least an hour. And I think,
22 you know, what beyond that, I'm not -- I have no powers of
23 prediction.

24 MR. ROSENTHAL: What I'd recommend, Your Honor,
25 just because I think that the former officers and the

1 current officers issues, the legal issues are really no
2 different in many respects that what you've already decided
3 with respect to Mr. Steinmetz. I think we could probably
4 move through those pretty quickly.

5 THE COURT: All right. So why don't we do those
6 then and take a break? All right, yeah. My understanding
7 is that -- and you can correct me if I'm wrong -- that you
8 want documents, to the extent that they're in the
9 possession, custody or control and deal with former or
10 current directors and officers, as well as Onyx, Nysco and
11 Balda, to the extent that they involve the business of BSG.

12 MR. ROSENTHAL: Exactly. And in terms of the
13 possession, custody and control standards, again, we're in
14 the Second Circuit, it's the practical ability standard, and
15 the case law is very clear that they have the --

16 THE COURT: I think we've sort of beaten that to
17 death. So let me hear from the other side because, again,
18 what I thought was important to just clarify for the record
19 before we have this conversation. It's to the extent that
20 they have possession, custody or control over those
21 documents to be practical matter and they relate to the
22 business of BSG.

23 So it's not -- if there is a document of a former
24 or current director, that they have possession, custody and
25 control of that, that does not deal with the business of

1 BSG, you're not asking for that.

2 MR. ROSENTHAL: But it has to fit within one of
3 the categories that the Court has already sustained as being
4 appropriate for discovery as being relevant.

5 THE COURT: Right.

6 MR. ROSENTHAL: But, Your Honor, one caveat. To
7 the extent that I think under the factual record that exists
8 before the Court and is, frankly, uncontested because
9 they've chosen to argue separate issues. Under the factual
10 record, I think that the Court should find, as other courts
11 have done, they have the practical ability to obtain this.
12 And, therefore, it's no longer this is just round one, and
13 round two is later on when they say, sorry, Judge, we don't
14 control this. They've already argued that control issue.

15 MR. HYMAN: Your Honor, regarding that. It's
16 impossible to rule on practicality unless there has been an
17 effort made to seek discovery of the docket and make a
18 request. So I --

19 THE COURT: Well, let me take the scope of
20 discovery, what's asked for first, and then we'll deal with
21 the control issue. So they've asked for things that would
22 fit into the discovery request, meaning it deals with BSG,
23 the business of BSG, such that it would be relevant for
24 purposes of COMI under sort of the American standard of
25 discovery. Do you have any quibble with that?

1 MR. HYMAN: Not with the scope of discovery, Your
2 Honor, but, you know, we talk about the facts that are in
3 the record. The facts that are in the record are the
4 articles that have been attached to the first letter, that
5 was a letter dated --

6 THE COURT: But I don't need to get into the
7 articles, if everyone agrees about the appropriate scope of
8 discovery and your argument is about control. So my thought
9 is that I've made a ruling as to Mr. Steinmetz about the
10 Royal Park factors. Again, this is pretty well-established
11 stuff. I don't normally make rulings about control when
12 people have discovery obligations because it's assumed, it's
13 part of the air we breathe in terms of civil cases and
14 discovery, so everyone understands what their obligation
15 are.

16 And if the foreign representative on behalf of the
17 Debtor has an ability to, as a practical matter, to get
18 documents that relate to the conduct of BSG from the former
19 directors, current directors, Onyx, Nysco and Balda, then
20 they're obligated to do that. So that's just the way it
21 works. So what is it that you want to talk about with that
22 context?

23 MR. HYMAN: Because I think that we've gotten a
24 little bit twisted in terms of economic relationship. I
25 think when you look at the cases, the economic relationship

1 is, again, the ability of the party that's requesting
2 production on a third party to exercise some leverage in an
3 economic basis over that party. Here, I think this is all
4 of the converse as it relates to the former directors.
5 There is no continuing economic relationship between BSG or
6 the joint administrators and the former -- and the former
7 directors and officers.

8 THE COURT: But that's not the test.

9 MR. HYMAN: That's a part of the test.

10 THE COURT: You've made it -- you've made it very
11 clear repeatedly, even when dealing with Mr. Steinmetz, that
12 from your client's -- from the foreign representatives point
13 of view, they are in control and other folks don't matter.
14 But for purposes of COMI, I'm supposed to look at who's
15 actually done what business and how things have developed
16 and what the center of main interest is and what's actually
17 been going on, what's the economic substance.

18 And even instances talking about change of COMI
19 from one venue to another, I have to have some understanding
20 of sort of historical things to compare it to new things to
21 find out whether that purported change in COMI is legit, is
22 done for any improper purpose, what the legal standards are
23 what they are.

24 So, again, to the extent you're relying on the
25 fact that everything changes, and the only people who are

1 relevant are the foreign representatives once they're
2 approved and, therefore, that's the lens in which to
3 understand discovery, I reject that premise.

4 MR. HYMAN: But typically, in a COMI shifting
5 case, as I understand them, Your Honor, if it's a shifting
6 of what looked like COMI in the first instance to a new
7 jurisdiction created for purposes of filing. That's not
8 what we have here.

9 THE COURT: No, I know. But what I'm saying is,
10 cases -- COMI shifting cases are relevant to the extent that
11 you're talking about people talking about timeframe and
12 saying you can cut off, this is what I do right this second,
13 and I don't anyone to look beyond that. And courts do look
14 beyond that because they look to see, well, what changed and
15 why did it change and how did it develop.

16 So, again, this is discovery. Everybody has a
17 right to be heard on the merits when and if we ever get to
18 the merits of this case. And so, again, I usually don't
19 have this kind of issues just come up repeatedly. If
20 there's emails dealing with BSG and you want to talk about
21 the relevant COMI time period, we can have that discussion.

22 But, frankly, if you look up any of the cases,
23 that will tell you what the relevant time periods are. I'm
24 not changing that; that is what it is. So through that
25 lens, whatever exists as to these category of people dealing

1 with the business of BSG, it's fair game.

2 MR. HYMAN: Except that we, you know -- in order
3 to establish possession, custody or control, we believe that
4 the burden is on the party seeking that discovery.

5 THE COURT: Do you really want to go there?

6 MR. HYMAN: No, I don't. I don't. But I want to
7 address, though, is some of the evidence that they've been
8 relying on which --

9 THE COURT: I am not taking in news articles, bits
10 of information for purposes of making value judgments in
11 this life or the next. I am looking at things to try to get
12 through discovery; that's all. So everybody reserves their
13 rights. I'm not -- judges are remarkably facile at saying
14 here's discovery and then they get to trial, just as we are
15 facile in separating our personal views and any frustrations
16 in the case leading up to trial. So it is what it is.
17 We'll get there. Everybody will get a fair shake on the
18 merits of anything they want to argue.

19 But for purposes of discovery, my ruling is just
20 what I said, which is that viewed through the lens of COMI
21 and the relevant time period -- that is well-established in
22 cases in the Southern District, and including a few that
23 I've issued, decisions on Chapter 15 cases, everybody knows
24 what the period is; that if there's information within the
25 possession, custody or control under the Second Circuit

1 standards that deals with these folks -- current and former
2 directors, officers, Onyx, Nysco, Balda -- that is relevant
3 to the business of BSG and COMI, I find that's appropriate
4 to produce and that I'm ordering to be produced.

5 And so, I'd ask that that go into the proposed
6 order that's going to be submitted after today's hearing.

7 MR. HYMAN: Your Honor --

8 THE COURT: So for that, given that I have less
9 information, I'm going to decline to get into Royal Park
10 issues for right now, in terms of it's a more complicated
11 web of things to figure out, but I can't imagine anybody
12 wants to have further discussions about what I think.
13 Again, we're making something overly complicated that, for
14 purposes of discovery, is just not that complicated.

15 So if a deal -- I mean, so Onyx was alleged to be
16 back office support. My understanding of the record is that
17 they used to be called BSG Management Services, Ltd. So, I
18 mean, some of these things are just -- I'm not sure why
19 we're fighting about them. So, again, you view them through
20 the lens of COMI and the relevant time periods for COMI,
21 fine, but it's fair game.

22 MR. HYMAN: Your Honor, as it relates to Onyx,
23 there is no contractual relationship with Onyx.

24 THE COURT: I know --

25 MR. HYMAN: If Onyx wants --

1 THE COURT: -- because you always talk about the
2 present tense, right now. I understand that, but, again,
3 I'm repeating myself. There are plenty of other issues to
4 get through. My ruling is my ruling, and it serves nobody's
5 interest to go back and forth on these things. So you all
6 are entitled to a decision. You may agree with it, you may
7 not agree with it -- that's what Courts of Appeals are for,
8 but we've got to move the case forward.

9 So I think with that, we've gotten through those
10 two issues that are related -- Mr. Steinmetz and the one we
11 just discussed. We need to go through the GDPR protocol
12 issues.

13 MR. ROSENTHAL: The third one, Your Honor, is
14 actually subsumed within the last one. But we have an
15 additional argument, which was the current directors -- you
16 lumped the current and former together. But there is a
17 current director, which is Mr. Cramer, who, in addition to
18 everything else is a current director of the company.

19 THE COURT: Well, I'll say what I said to him.
20 There's -- it's well established what the relevant time
21 period is for COMI. And so I have nothing new or, you know,
22 of value to add to what's well established in Circuit
23 precedent and in this Court's --

24 MR. ROSENTHAL: I'll just -- if I can just note on
25 the record, Your Honor, just with respect to Onyx because

1 maybe Mr. Hyman isn't aware, but Onyx is run by Mr. Cramer,
2 their director.

3 THE COURT: Well, I've already made a ruling. I
4 don't think we need to go there, so here's what I'd like to
5 do. We do need to talk about the other issues, which I
6 think are somewhat different than the ones we've covered
7 thus far. My thought is to talk to you nice people after
8 lunch, so why don't we come back at 2:00, rather than have
9 you come back and wait around. And so, I think that that'll
10 work.

11 And so, unless anybody has any parting wisdom
12 where it would actually be of use to you before you go off
13 to lunch, we'll just circle back at that point. All right.
14 Thank you very much. All right.

15 And CourtCall Operator, I'm going to keep the line
16 open, obviously because we have another matter that's on for
17 11:30, and that matter will be done before 2:00. And we
18 will then call back at 2:00, and anybody who is on the phone
19 for the BSG matter can call back. You can either just stay
20 on the line or call back in at that time. All right?

21 COURTCALL OPERATOR: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 COURTCALL OPERATOR: Thank you.

24 THE COURT: I sometimes forget to give that speech
25 and there's confusion that results, so I have to remind

1 myself that that's an important thing to straighten out.

2 (Recess)

3 THE COURT: We're back on the record in BSG
4 Resources Limited, a Chapter 15 case to continue our
5 discussion about the issues raised in discovery in
6 connection with initially the motion for a protective order
7 and then the extensive letters back and forth on a variety
8 of issues.

9 We got through a number of issues this morning and
10 so I think we were going to pick up with the GDPR protocol
11 and the issues that are identified in the letters on that.

12 MR. ROSENTHAL: That's right, Your Honor. And as
13 I mentioned, my colleague Ms. Balter will address that.

14 MS. BALTER: Good morning, Your Honor. We wrote
15 to Your Honor after an extensive back and forth because
16 we're at an impasse on several GDPR issues. There are three
17 issues that are principally in dispute. The first issue
18 concerns the joint administrator's responsibility to
19 identify on a specific basis the categories of personal data
20 that they've adapted. The joint administrators have agreed
21 that where a document contains redacted personal information
22 they will provide a log and that log will identify the
23 category of personal information.

24 The issue comes up where a single document would
25 have multiple redactions. In that case the log would

1 identify the various categories of redactions that the joint
2 administrators say that they won't identify for us which
3 category concerns which redaction. They're now saying that
4 this would add an additional million dollars to discovery.
5 Your Honor, we think that's inconceivable. This is work
6 that has to be done in the first place for them to simply
7 identify the category of data that's been redacted.

8 THE COURT: Well, let me ask you. I heard a
9 question before about text boxes and I wasn't quite sure if
10 that was the same issue or from a different angle or a
11 different issue. Because, obviously, we've all seen
12 privileged logs and privileged logs may say Page 20, Line 2,
13 this redaction -- or people can do it on documents, they can
14 do it lots of different ways. So, maybe you can help me
15 through that issue.

16 MS. BALTER: Your Honor, we'd be happy for them to
17 do it in either way. Either to specify directly on the
18 document itself that they're redacting -- you know, do the
19 redaction box and write in the category of personal data
20 that's being redacted on the document if they'd prefer to do
21 it with a log. We just want to make sure that that log does
22 identify the page and the particular redaction that
23 corresponds with that category so that we don't have to go
24 back and reinvent the wheel.

25 THE COURT: So you can see the context.

1 MS. BALTER: Exactly.

2 THE COURT: All right. Would you be okay with, as
3 might be the case, certain things that if you can tell by
4 the context -- so, for example, if you have an email and you
5 have a CC, and you have a blacked out thing -- let's just
6 use that as a hypothetical for a second, you could pretty
7 much tell from the context that that's an email that's been
8 redacted and that whatever your general -- their general
9 comment about it, it would be covered by -- you know, they
10 could say all email address redacted are based on this,
11 that, and the other thing.

12 So, I would assume that if there was certain
13 circumstances where it's very clear by context. Now, that
14 may obviously not be all circumstances but there might be a
15 limited number where that would be true.

16 MS. BALTER: I can see that circumstance where
17 you'd have a CC box in there and numerous redactions and
18 they say we've redacted all of these because they're
19 personal emails. That would be the category. I think the
20 issue comes up where there's something in the CC box,
21 there's something on Page 3 of the document, there's
22 something on Page 5 of the document and it listed out two to
23 three categories of information and we have to go back and
24 reconstruct them.

25 As we say, we can figure out that one is an email

1 address but for the other two we'd have to, again, just
2 reinvent the wheel. That's information that they know when
3 they're doing the redaction itself, so it's easy enough for
4 them to just identify it for us so that we don't have the
5 burden. The burden should be on the redacting party.

6 THE COURT: All right. So, let me ask, does it
7 makes sense to go back and forth in each one of these until
8 we sort of get an answer on each rather than take them as a
9 group? What would you prefer? I don't know how long your -
10 -

11 MS. BALTER: I think that makes sense, Your Honor.

12 THE COURT: All right. I don't want to -- if your
13 whole presentation is not too long, I'm happy to take them
14 all at once. But it sounds like we'll do it one at a time.
15 So, let's talk about this issue about specific data, and
16 logs, and text boxes and all sorts of exciting things that
17 everybody loves to talk about.

18 MR. HYMAN: Absolutely, Your Honor. And in
19 advance to today, we made an example of two documents, one
20 which would be produced in the format that the joint
21 administrators have been going through and doing their
22 production to date, and another as would be produced under
23 the suggestion.

24 THE COURT: All right. Do you have a copy for
25 counsel?

1 MR. HYMAN: I do, I do.

2 THE COURT: All right, great. Thank you.

3 MR. HYMAN: May I approach?

4 THE COURT: Thank you. All right. So I have the
5 documents and I just have this ticket that says Vale
6 Proposal and JA Proposal.

7 MR. HYMAN: All right. So, this is, Your Honor,
8 an example of just one of thousands and thousands of
9 documents that are being produced. And you can see,
10 obviously, this is an example that has quite a bit of
11 personal data in it.

12 As those parties that are going through the
13 documents in the first instance to review them for GDPR
14 information, on their screen it shows a drop box, which is
15 what you were referring to. The drop box allows them to
16 check a box for a specific category of personal data that
17 they are redacting. It does not require them when they
18 redact it to go in and type specifically for each redaction
19 what that type of information is.

20 When we're talking about thousands of documents in
21 the form of the Vale proposal, that requires for each
22 redaction, rather than just hitting a box that redacts the
23 information and clicking another box that has the category
24 of information, it requires them to go in manually for each
25 one of the redactions and identify it.